

### REMARKS

The Examiner indicates that this Office Action has been designated a Final Action because the "Applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action." Applicant notes that Applicant's previous amendment (Amendment A, filed September 5, 2003) amended the priority claim, but made no claim amendments. A Petition to accept an unintentionally delayed claim under 35 U.S.C §120 has been filed, a copy of which is attached. The instant application claims priority to United States Application Serial No. 09/134,323 (the '323 Application), filed August 14, 1998 (now U.S. Patent No. 6,241,734), through its progeny. The assignment of the '323 Application (and thus its progeny) by the inventors to Kyphon Inc. is recorded in the United States Patent and Trademark Office at Reel/Frame 9757/0854, a true copy of which is attached. The assignment of the instant application by the inventors to Kyphon Inc. is recorded in the United States Patent and Trademark Office at Reel/Frame 012696/0876, a true copy of which is attached. The claimed subject matter of the '323 Application and the instant application were commonly owned by Kyphon Inc. at the time the invention of each application was made. All rejections made in the present Office Action could have been made in the previous Office Action, and therefore are not "new grounds" necessitated by Applicant's previous amendment. Therefore, Applicant respectfully requests that the finality of this Office Action be withdrawn in accordance with MPEP 706.07(a).

The specification has been amended to insert the filing date of a related application.

Claims 1-4 have been canceled.

Claims 5-14 remain pending in the application. Of these, claims 5-10 are currently amended.

Claim 6 is allowed.

The Examiner indicates that claims 5 and 9 are allowable if rewritten in independent form.

The claims have been amended in view of this indication of allowability as follows:

1. Claim 5 has been amended to incorporate the subject matter of claims 3 and 5.
  2. Claim 7 has been amended to incorporate the subject matter of claims 7 and 9.
  3. Claim 8 has been amended to incorporate the subject matter of claims 8 and 9.
  4. Claim 9 has been amended to depend on claim 6.
  5. Claim 10 has been amended to provide a cannula as defined in claim 5 or 6 or 7 or 8.
- Claims 11-14 depend from the amended claim 10.

Claims 5-10 have been further amended to more particularly state the subject matter being claimed.

Entry of this amendment under 37 C.F.R. §1.116 is believed to be warranted because the amendment cancels claims and complies with the requirements of form set forth in the previous Office Action.

Applicant believes the case is now in condition for allowance. Reconsideration in view of the foregoing amendments and remarks and allowance of claims 5-14 is respectfully requested.

Respectfully Submitted,

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Kypkon/17239-FOR/040521 Amend B

Enclosures: Amendment Transmittal Letter  
Assignment of United States Application Serial No. 09/134,323  
Assignment of United States Application Serial No. 10/001,937  
Copy of Petition to accept an unintentionally delayed claim under 35 U.S.C §120  
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